IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO.1478 OF 2006

WITH

CIVIL APPLICATION NO.341 OF 2006

M/s.Fidelity Software ...Appellant

Versus

Employees State Insurance

Corporation & Anr. ...Respondents

.....

Mr.Sachin i/b Mr.Sruesh S.Pakale for Appellant.

Mr.H.V.Mehta for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

FEBRUARY 20, 2006.

P.C.

1. Heard Counsel for the parties. Arguable questions are raised.

2. Admit. Mr.Mehta waives notice for Respondents.

3. As short question is involved, Appeal is taken up for hearing forthwith, by consent.

4. This Appeal takes exception to the order passed by the Judge, Employees State Insurance Court dated January 12, 2005 in Application No.25 of 1999. The order reads thus:

> "The Applicant as well as representative of the applicant and the applicant and the advocate for the complainant are absent when called. The matter is old one. the record reveals continuous absence and in such old matter when none are present, then there is no alternative than to dismiss application for want of prosecution. Hence the order.
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> ORDER
>
> Application stand dismissed for want of prosecution."

5. According to Appellant, the Appellant had no knowledge about the date of hearing on 12th January 2005. The Appellant had no knowledge that the impugned order came to be passed by the Trial Court on 12th January 2005. The fact that the said order came to be passed by the Trial Court came to

the knowledge of the Appellant on 5th November 2005 when the Appellant received notice of demand from the Authority. Soon thereafter, the Appellant took necessary steps and has eventually filed the present Appeal.

6. In the meantime, the Appellant has already deposited the entire amount, which fact stated by the Appellant on affidavit before this Court, is not in dispute. It does appear that the Application came to be dismissed for want of prosecution on 12th January 2005 due to continuous absence of the Appellant and its advocate.

7. As the Appellant has already deposited the entire amount, though according to the Appellant, that deposit is made without prejudice to the rights and contentions in the present proceedings, in the interest of justice with a view to give opportunity to the Appellant to pursue its statutory remedy, I propose to pass the following order:

The impugned Judgment and order dated 12th

January 2005 below Application (ESI) No.25 of 1999 is set-aside. Instead, the said application is restored to the file of the Judge, ESI Court, Mumbai to its original number to be decided on merits in accordance with law on the condition that the Appellant shall pay cost quantified at Rs.3,000/- (Rupees Three Thousand) to the Respondents for this indulgence. Amount of cost should be paid within two weeks from today. Besides, the Appellant shall extend complete co-operation to the Trial Judge for early disposal of the proceedings which are very old and stated to be pending since 1999. The Appellant shall not seek any adjournment before the Trial Judge on any count whatsoever.

The Trial Judge shall decide the main proceedings on its own merits in accordance with law. It will be open to the Appellant to apply to the Trial Court for appropriate interim relief as may be advised during the pendency of the

proceedings, which will be considered by the Trial Judge on its own merits.

Appeal and the accompanying Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.